

SujauddIn Vs. Emperor

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Court : Kolkata

Decided On : Dec-20-1928

Reported in : AIR1929Cal242

Appellant : Sujauddin

Respondent : Emperor

Judgement :

Rankin, C.J.

1. This is an appeal by one Sujauddin against an order directing a complaint to be preferred against him for having committed offences under Sections 193, 465, 471 and 109, I.P.C. It appears that one Padam Prosad was in August of last year acquitted on a charge under Section 372, I.P.C , of selling a minor girl and that at the trial of that accused a certain certified copy was produced from the register of births at Benares. It is said that the copy which was produced by the defence had been tampered with and that it was a false document the subject-matter of forgery within the meaning of the Code. Thereupon the complainant in the case applied to the Magistrate who tried the matter against three persons two of them were named, Padam Prosad and Behari Lal, and one was unnamed but his character and description were indicated, namely, that he was a clerk in the office of the Registrar of Births at Benares. The Magistrate directed a police investigation and after considering the whole matter made up his mind that he would not prefer any complaint. The complainant appealed to the High Court and the High Court made

a complaint against Padam Prosad and Behari Lal. Thereupon the complaint so preferred came on for hearing or investigation before the Chief Presidency Magistrate and he after a lapse of some time, namely, in October last, directed the Public Prosecutor to apply to the successor of the Magistrate who had tried the case for a complaint to be made against the present appellant, Sujauddin and one Kanhaiyalal. On 11th October this complaint was made.

2. The appellant appeals and he takes his stand upon the circumstance that the question whether any complaint should be made was discussed before the Magistrate who had actually tried the case and the matter having gone to the High Court a complaint was directed against two persons only and not against him.

3. Mr. Bhattachariya for the Crown says, first of all, that it is not necessary when once a complaint has been made against certain persons in respect of an offence that another complaint should be made against other persons whom the Magistrate finds to be necessary parties as persons implicated in the offence. He contends before us that complaints are not made against specific offenders but of offences and that once a complaint is made the Magistrate conducting the enquiry has to proceed under Section 200, Criminal P.C., and there is no objection whatsoever to his directing summonses to issue against persons other than those specifically named in the complaint if he finds that this is necessary for the ends of justice. In support of this contention he refers to the decision of a Division Bench of this Court *Giridhari Lal v. Emperor* [1917] 21 C.W.N. 950. He further contends that even if it be not the case that this complaint is supererogatory, the Magistrate in the present case was well warranted in making a complaint against Sujauddin.

4. It appears that Sujauddin is one of several accused persons who are about to be put on their trial before the present High Court Session, an order of commitment having been made. Mr. Chatterjee has pointed out to us that an order was made to the effect that until this appeal was heard no order of commitment would be made to the High Court Session and, on an examination of that matter, I think the only bearing of it is this that it would not be right, for the purposes of this appeal, to regard Mr. Chatterjee's case as prejudiced on the score of being late. I do not propose to take that fact against the appellant in the present case at all.

5. Now, the question whether a complaint made as required by Section 195 of the Code by virtue of Section 476, is necessary or not where the same offence has already been made the subject-matter of a complaint mentioning other persons is not an easy one. Had it been necessary to go into that matter on principle and at length I would have required further time to do it justice, and I do not think it necessary in this case to attempt to come to a final conclusion. The principle that a complaint is in respect of offences and not in respect of offenders is a kind of proposition that may be very sound and at the same time may be pushed too far ; and in this matter a very careful examination of the relevant sections of the Criminal Procedure Code would have to be undertaken before the law could be properly laid down. I think it is just possible also that the offences complained of in this case which I have already mentioned at the beginning of this judgment might not all be in the same position for the purposes of this argument. However that may be, I am of opinion that this appeal must fail on the short ground that, assuming another complaint to be necessary, I am not satisfied that there was anything wrong in making a complaint in the circumstances of this case against Sujauddin.

6. The first principle to be considered in this matter is that it is the public interest which is paramount in the matter. I should be slow to say anything that would encourage a complainant to ask for a complaint against a person and being refused to make another attempt to get the same order Magistrates would be very well advised to deal with such applications very firmly. In this case the real truth of the matter is that the application to the trial Magistrate was not an application against or in respect of Sujauddin at all. His name came into the matter incidentally and only because the Magistrate having directed a police investigation the question of this man's name with others arose. That Magistrate having refused to make any complaint the complainant appealed to this High Court and I am quite clear that any such appeal would not be regarded as an appeal against the refusal of an order against Sujauddin. The High Court having made an order against two of the three people against whom the complaint was asked for cannot, in my judgment, be regarded as having refused to make a complaint in the circumstances against Sujauddin. When the matter came before the Chief Presidency Magistrate after the High Court's complaint he found that it was

necessary, to get to the bottom of this matter, to have other parties added as persons to be charged ; and, having regard to principle and to the public interest, I and not of opinion that the previous proceedings at the instance of the complainant afford any reason why the complaint against Sujauddin should be set aside. In my judgment, the appeal must be dismissed.

Buckland, J.

7. I agree.

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